

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2627

Cir. Ct. No. 2011TR505

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITY OF ANTIGO,

PLAINTIFF-RESPONDENT,

V.

MARK L. KARLSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Langlade County:
FRED W. KAWALSKI, Judge. *Affirmed.*

¶1 STARK, J.¹ Mark Karlson appeals a forfeiture judgment for operating while intoxicated, first offense. Karlson argues the circuit court erred by

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

denying his suppression motion because the officer unlawfully stopped his vehicle. We reject Karlson's argument, and affirm.

BACKGROUND

¶2 At the suppression hearing, officer Jerry Reichl testified that on May 21, 2011, dispatch notified him of a traffic complaint involving a gray minivan traveling north on Highway 45. Reichl found a vehicle matching the description, ran the license plate on the vehicle, and discovered the vehicle's registration was expired. Reichl also observed the vehicle swerving within its lane of traffic, and stopped the vehicle. Ultimately, Karlson, who was driving, was arrested for operating while intoxicated.

¶3 On cross-examination, Reichl conceded that he may not have stopped the vehicle involved in the traffic complaint, but he testified that it did not matter because the vehicle he stopped had an expired registration. Reichl also did not recall whether he knew the registration was expired based on an outdated registration sticker or whether he had dispatch run the information and then dispatch informed him the registration was expired. After further questioning, Reichl conceded dispatch may have told him the registration was expired when it made its initial dispatch regarding the traffic complaint with the gray minivan. After more questioning, Reichl confirmed that it was dispatch who told him the registration was expired.

¶4 On redirect examination, Reichl confirmed he stopped the vehicle because of the expired registration. On recross-examination, Reichl testified that, although he stated in his police report that the registration was expired, this information was not included in the first paragraph of the report, where he described the initial dispatch regarding the traffic complaint.

¶5 The court issued a written decision that stated, in relevant part:

Officer Jerry Reichl was on patrol ... when he received a message from dispatch that a grey minivan was on the highway with an expired registration. He observed such a vehicle and called in the plate and learned that this vehicle was indeed the vehicle that was being operated with an expired registration. While the Officer was following this vehicle he noticed that the vehicle had weaved within its own lane three (3) times. ...

A stop is ... deemed reasonable if there is a violation of the traffic code. ... Further, also weaving in one's own lane in and of itself would not create reasonable suspicion, that fact coupled with other circumstances such as [an] expired registration is [a] sufficient basis to conclude that the stop was reasonable.

The court denied the suppression motion. Karlson pleaded no contest to the operating while intoxicated forfeiture, and the court found him guilty. He appeals.

DISCUSSION

¶6 As a threshold issue, we begin with the issue of waiver. Karlson pleaded no contest to an operating while intoxicated forfeiture. “[A] voluntary and understanding guilty or no contest plea in a civil case constitutes a waiver of the right to appeal” *County of Racine v. Smith*, 122 Wis. 2d 431, 437, 362 N.W.2d 439 (Ct. App. 1984). Although our legislature has carved out a narrow exception to this waiver rule for criminal cases, *see* WIS. STAT. § 971.31(10),² that statute “has no application to civil cases.” *Smith*, 122 Wis. 2d at 438. However, the guilty-plea waiver rule is a rule of judicial administration and in our discretion

² WISCONSIN STAT. § 971.31(10) provides: “An order denying a motion to suppress evidence ... may be reviewed upon appeal from a final judgment or order notwithstanding the fact that the judgment or order was entered upon a plea of guilty or no contest to the information or criminal complaint.”

we can decline to apply the rule. *State v. Tarrant*, 2009 WI App 121, ¶6, 321 Wis. 2d 69, 772 N.W.2d 750. In this case, both parties urge us to consider the merits of Karlson’s appeal, noting Karlson’s plea was based on a specific stipulation that he would be appealing the court’s denial of his suppression motion. Based on the parties’ stipulation, we will exercise our discretion to reach the merits of Karlson’s appeal.

¶7 Karlson argues the circuit court erred by denying his suppression motion because the circuit court’s findings do not support the determination that Reichl had reasonable suspicion to stop his vehicle. A police officer may conduct a traffic stop when the officer has grounds to “reasonably suspect that a crime or traffic violation has been or will be committed.” *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether reasonable suspicion exists is a question of constitutional fact. *Id.*, ¶10. We uphold the circuit court’s factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶8 Karlson objects to the circuit court’s determination that Reichl stopped him because of an expired registration. He contends Reichl did not determine his registration was expired until *after* Reichl stopped him. Karlson argues the circuit court’s factual findings that Reichl “received a message from dispatch that a grey minivan was on the highway with expired registration” and that Reichl “observed such a vehicle and called in the plate and learned that this

vehicle was indeed the vehicle that was being operated with an expired registration” were clearly erroneous.³

¶9 In support of his assertion that the circuit court’s findings were clearly erroneous, Karlson points to Reichl’s concession during cross-examination that he did not include the fact that he knew about the expired registration in the first paragraph of his police report. He also asserts that Reichl’s “recollection was poor at best,” that the testimony regarding how Reichl learned the registration was expired was equivocal, that Reichl’s testimony was unreliable, and that, if an expired registration was the reason for stopping the vehicle, “additional information would have been available” to prove the basis for the stop. He also asserts the “only credible version” is that Reichl did not learn of the expired registration until after the stop.

¶10 A circuit court’s factual finding is clearly erroneous if “it is against the great weight and clear preponderance of the evidence.” *State v. Sykes*, 2005 WI 48, ¶21 n.7, 279 Wis. 2d 742, 695 N.W.2d 277 (quoted source omitted). Further, credibility determinations are for the circuit court. *See State v. Thiel*, 2003 WI 111, ¶23, 264 Wis. 2d 571, 665 N.W.2d 305. In this case, the record supports the circuit court’s determination that Reichl knew Karlson’s vehicle registration was expired before the stop. Reichl’s testimony on cross-examination

³ Karlson also asserts the circuit court’s determination that Reichl “had noticed that the vehicle had weaved within its own lane three (3) times” was clearly erroneous. However, Karlson develops no argument in support of why this finding was clearly erroneous. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (court will not address undeveloped and inadequately briefed arguments). Further, we need not address this issue because we conclude there was reasonable suspicion for the stop regardless of whether Karlson was weaving within his lane. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

regarding at what point before the stop he learned the registration was expired (whether he learned through the initial dispatch or whether he learned after he called in the license plate) was somewhat equivocal. However, Reichl repeatedly testified that he knew the registration was expired before the stop and he stopped the vehicle on that basis. Accordingly, the circuit court's determination that Reichl knew the registration was expired prior to the stop is not against the great weight and clear preponderance of the evidence and is therefore not clearly erroneous. *See Sykes*, 279 Wis. 2d 742, ¶21 n.7.

¶11 Because Reichl knew before the stop that Karlson's vehicle had an expired registration, contrary to WIS. STAT. § 341.04(1), Reichl lawfully stopped Karlson's vehicle based on that traffic violation. *See Popke*, 317 Wis. 2d 118, ¶23. The circuit court therefore properly denied Karlson's suppression motion.⁴

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

⁴ The State argues in its brief that Reichl also lawfully stopped Karlson's vehicle based on an anonymous tip dispatch received that Karlson's vehicle was cutting people off and driving all over the road, which was corroborated by Reichl's own observation that the vehicle was weaving within its lane. Because we conclude Reichl lawfully stopped the vehicle based on the expired registration, we need not address the validity of this alternative basis for the stop. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) ("cases should be decided on the narrowest possible ground").

